IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 15, 2006 Session

WESTERN EXPRESS, INC. v. DOLLAR GENERAL CORPORATION

Appeal from the Chancery Court for Davidson County
No. 04-220-I Claudia Bonnyman, Chancellor

No. M2005-02580-COA-R3-CV - Filed on June 27, 2007

A trucking company filed suit to compel a consignee of paper goods to pay for shipping charges after the consignor went into bankruptcy while owing the trucker $750,000 for transporting those same goods. The trucker argued that there is a presumption under both common law and federal statute that a consignee of goods is subject to secondary liability for such charges. The consignee argued that the presumption does not apply under the circumstances of this case and that it had not entered into any contract with the trucker requiring it to make direct payments for shipping. After a hearing, the trial court granted summary judgment to the consignee and dismissed the trucking company's claim. We affirm the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Isham B. Bradley, Nashville, Tennessee, for the appellant, Western Express, Inc.

Paul S. Davidson, Mary Beth Thomas, Nashville, Tennessee, for the appellee, Dollar General Corporation.

OPINION

I. UNPAID FREIGHT CHARGES

Western Express is a trucking company which operates as a common carrier. Its headquarters are in Davidson County, Tennessee. American Tissue Mills of Tennessee is a paper company which used the services of Western Express for delivery of its merchandise to facilities owned by Dollar General Corporation. As to these freight transactions, American Tissue was the consignor. Dollar General is a retailer which also has its headquarters in Davidson County, and it was the consignee of the products delivered. During the years 2000 and 2001, Western Express picked up thousands

of loads from American Tissue and delivered those loads to Dollar General's distribution centers.

It is undisputed that there was no written contract between Western Express and Dollar General and that Western Express looked to American Tissue for payment of freight charges. When American Tissue required the services of Western Express, it would notify the carrier that a load was available to be picked up and delivered to Dollar General. The load was accompanied by a Bill of Lading, which documented the number of packages it contained, the weight, and the destination. The legend "PREPAID" was printed or stamped in a box labeled "Freight Terms."[1]

The parties agree that the term prepaid did not mean that freight costs had already been paid. Rather in the terminology of the transportation industry, it means that the consignor is to be billed for those costs. *See Consol. Freightways v. Admiral Corp.*, 442 F.2d 56, 58 fn.1 (7th Cir. 1971). The bill of lading also had the words "POD REQUIRED FOR PAYMENT" stamped or printed on its face. POD means proof of delivery. It thus appears that neither American Tissue nor Western Express could have expected payment until after the load was delivered to Dollar General and the consignee's agent signed the bill of lading.

After delivery, American Tissue would invoice Dollar General for the products it had received, with the shipping costs included in the price. Dollar General generally paid American Tissue from ninety to one hundred and twenty days after the date of invoice without verifying whether American Tissue had paid the freight charges to Western Express.

For its part, Western Express would directly invoice American Tissue for its services, stamping the invoice "due upon receipt." The price was derived from the carrier's rate sheets. According to the affidavit of Paul Wieck, a Western Express owner and officer, the carrier was normally paid within thirty or forty-five days of the invoice date. Unfortunately for Western Express, however, American Tissue began to fall behind in its payments. Since Western Express's invoices to American Tissue typically amounted to about $100,000 per week, this naturally caused the freight company great concern and resulted in daily phone calls to American Tissue asking for payment. Western Express's executives also went to American Tissue's headquarters for face-to-face discussions.

American Tissue explained that LaSalle Bank had just restructured its debt. It also assured Western Express that it was not contemplating bankruptcy. Executives of Western Express discussed among themselves whether their best course of action would be to continue to extend credit to American Tissue or to withhold further transportation services until American Tissue made serious progress on payment of its existing obligations. Since American Tissue was a very important client for Western Express, the company decided to continue servicing its account. Officers of

[1]The record includes representative samples of a bill of lading for a shipment from American Tissue to Dollar General and an invoice from Western Express to American Tissue for delivery of such a shipment. The parties do not dispute that these exhibits are typical of the documents executed for the numerous deliveries which generated the charges that are the subject of their dispute.

Western Express admitted that at no time prior to American Tissue's bankruptcy did they inform Dollar General that American Tissue was behind on its freight payments, or that Western Express would ultimately look to the consignee for payment if the consignor failed to satisfy its obligations.

American Tissue filed a Chapter 11 bankruptcy petition on September 10, 2001. Western Express was listed on the claim docket as an unsecured creditor with a claim of $1,018,749. Dollar General was among the debtors owing substantial sums to the bankrupt company. It is undisputed that Dollar General paid over $3,291,000 to American Tissue's bankruptcy estate after September 10, 2001, on invoices dated prior to September 10, 2001.

II. PROCEEDINGS IN THE TRIAL COURT

Western Express filed a complaint against Dollar General on January 27, 2004. The complaint recited that the carrier had exhausted all the remedies available to it in American Tissue's bankruptcy proceeding, but was unable to collect all the transportation charges it was owed. It claimed that American Tissue and Dollar General were jointly and severally liable for those unpaid charges and prayed for a judgment against Dollar General in the amount of $747,550, as well as for prejudgment interest and attorney fees.

Dollar General filed a Motion for Summary Judgment, supported by a statement of undisputed facts, a memorandum of law, and other evidentiary material. As the consignee, Dollar General contended that as a matter of law liability for payment of freight charges may be allocated by contract, and that in the present case the contract of carriage (in the form of the bill of lading) provided that only American Tissue would be responsible for freight charges. The consignee further observed that until American Tissue declared bankruptcy, Western Express never informed it that American Tissue was delinquent in its obligation to pay the freight charges or that Western Express might ultimately look to the consignee, Dollar General, to pay those charges.

The court agreed with Dollar General's arguments and announced its decision from the bench. On August 22, 2005, it entered an order dismissing Western Express's claim on summary judgment. The original draft of that order indicated that Dollar General was entitled to prevail for two reasons: (1) because any common law presumption of consignor/consignee joint and several liability was rebutted by the contractual dealings between the parties, and (2) because Western Express was equitably estopped from seeking to impose double liability on Dollar General.

Western Express objected to the language in the proposed order related to estoppel, contending that when the court announced its ruling it relied entirely upon the terms of the contract between Western Express and American Tissue. After a hearing on the plaintiff's objections, the trial court omitted any references in the order to estoppel or to the equities of the case by drawing lines through all such references and initialing the changes. This appeal followed.

III. STANDARD OF REVIEW

The trial court is empowered to grant summary judgment to a party if "the pleadings, interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue of any material fact and that the moving party is entitled to judgment as a matter of law." Tenn. R. Civ. P. 56.04. *See also Blair v. West Town Mall*, 130 S.W.3d 761, 764 (Tenn. 2004); *Pero's Steak & Spaghetti House v. Lee*, 90 S.W.3d 614, 620 (Tenn. 2002); *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993). As our Supreme Court said in *Byrd v. Hall*, 847 S.W.2d 208 (Tenn. 1993), "[s]ummary judgment is not a disfavored procedural shortcut but rather an important vehicle for concluding cases that can and should be resolved on legal issues alone." *Byrd*, 847 S.W.2d at 210; *Messer Griesheim Indust. v. Cryotech of Kingsport, Inc.*, 45 S.W.3d 588, 608 (Tenn. Ct. App. 2001); *Airport Prop., Ltd. v. Gulf Coast Dev. Inc.*, 900 S.W.2d 695, 697 (Tenn. Ct. App. 1995)

However, summary judgment should be granted only when the undisputed facts, and the inferences reasonably drawn from the undisputed facts, support only one conclusion - that the party seeking the summary judgment is entitled to a judgment as a matter of law. *Draper v. Westerfield*, 181 S.W.3d 283, 288 (Tenn. 2005); *Webber v. State Farm Mutual Auto. Ins. Co.*, 49 S.W.3d 265, 269 (Tenn. 2001); *Brown v. Birman Managed Care, Inc.*, 42 S.W.3d 62, 66 (Tenn. 2001).

Summary judgments do not enjoy a presumption of correctness on appeal. *Nelson v. Martin,* 958 S.W.2d 643, 646 (Tenn. 1997); *Hembree v. State*, 925 S.W.2d 513, 515 (Tenn. 1996). Reviewing courts must therefore make a fresh determination as to whether the requirements of Tenn. R. Civ. P. 56 have been met. *Mason v. Seaton*, 942 S.W.2d 470, 472 (Tenn. 1997); *Basily v. Rain, Inc.*, 29 S.W.3d 879, 882 (Tenn. Ct. App. 2000).

IV. ANALYSIS

The operative facts of this case are undisputed, and since the trial court granted Dollar General summary judgment the resolution of this appeal depends first upon a question of law: whether under the circumstances presented a carrier of goods can look to the consignee for payment of freight charges where the consignor has failed to make the contractually agreed upon payments.

We begin our discussion with the bill of lading, a document which plays a vital role in the orderly transportation of goods between parties by serving as both a contract and a receipt. *See Southern Pacific Transp. v. Commercial Metals*, 456 U.S. 1815, 1820 (1982) ("The bill of lading is the basic transportation contract between the shipper-consignor and the carrier."); *Agar Packing & Provision Co. v. Weldon*, 300 S.W.2d 51, 52 (Tenn. Ct. App. 1956)(". . . the bill of lading is not only a contract, it is also a receipt"). The bill of lading documents the carrier's agreement to deliver the goods therein described at a particular place, subject to the conditions therein described, according to the usual course of transportation. *Fourth National Bank v. Nashville C. & St. L. Railway*, 161 S.W. 1144, 1146 (Tenn. 1913); 5 Tennessee Juris. *Carriers of Goods* § 19. There was no contract for transportation in this case aside from the bills of lading.

The face of the "Uniform Straight Bill of Lading" made an exhibit in this case contains space for insertion of information as to the identity of the consignor, the carrier and the consignee; pickup and delivery locations; description of the merchandise; and the expected method of payment. The reverse side is headed "Terms & Conditions" and sets out in general terms the rights and duties of the parties.

Among those terms and conditions, Section 7(a) states that "[t]he consignor or consignee shall be liable for the freight or other lawful charges accruing on the shipment or billed as corrected, except that collect shipments may move without recourse to the consignor when the consignor so stipulates by signature or endorsement in the space provided on the face of the bill of lading. . . " None of the shipments at issue in the present case were collect shipments, and the consignor did not affix a signature to the space in the bill of lading described in Section 7(a).

Section 7(c), contains a provision to protect the rights of the carrier to receive its fees by allowing it to withhold delivery until payment, or a guarantee of payment, is made. It states that "[n]othing in this bill of lading shall limit the right of the carrier to require the prepayment or guarantee of the charges at the time of shipment or prior to delivery."

Nowhere does the bill of lading state that secondary liability falls upon the consignee where the consignor has agreed to pay but has defaulted. Additionally, the bill of lading is a contract between the consignor and the freight company. Although the form of the bill of lading is prescribed by the Interstate Commerce Commission pursuant to Congressional authority, our courts have generally held that the parties are free to allocate responsibility for payment by contract. The United States Supreme Court made this point forcefully and set out a variety of possible contractual arrangements in *Louisville & Nashville R.R. Co. v. Central Iron & Coal Co.*, 265 U.S. 59 (1924). Note that the use of the term "the shipper" in the following paragraph is another way of referring to the consignor.

> . . . delivery of goods to a carrier for shipment does not, under the Interstate Commerce Act (Comp. St. § 8563 et seq.), impose upon a shipper an absolute obligation to pay the freight charges. The tariff did not provide when or by whom the payment should be made. As to these matters carrier and shipper were left free to contract, subject to the rule which prohibits discrimination. The carrier was at liberty to require prepayment of freight charges, or to permit that payment to be deferred until the goods reached the end of the transportation. *Wadley Southern Ry. Co. v. Georgia*, 235 U. S. 651, 656, 35 Sup. Ct. 214, 59 L. Ed. 405. Where payment is so deferred, the carrier may require that it be made before delivery of the goods, or concurrently with the delivery, or may permit it to be made later. Where the payment is deferred, the contract may provide that the shipper agrees absolutely to pay the charges, or it may provide merely that he shall pay if the consignee does not pay the charges demanded upon delivery of the goods, or the carrier may accept the goods for shipment solely on account of the consignee, and, knowing that the shipper is acting merely as agent for the consignee, may contract that only the latter shall be

> liable for the freight charges, or both the shipper and the consignee may be made liable. Nor does delivery of goods to a carrier necessarily import, under the general law, an absolute promise by the shipper to pay the freight charges.

Louisville & Nashville R.R. Co. v. Central Iron & Coal Co., 265 U.S. 59, 66 (1924). *See also Nashville, Chattanooga & St. Louis Railway v. Murphree*, 2 Tenn. App 482, 1926 WL 1999 at *3 (1926).

Thus, the parties to a shipping arrangement may contract for liability for freight costs in various ways. The question in this case is what was the contractual arrangement herein.

The bills of lading in this case were marked "Prepaid," which the parties agree signifies that freight charges would be paid by American Tissue. Dollar General accepted the goods subject to that understanding. The consignee, Dollar General, notes that it had no role in American Tissue's decision to use Western Express as its carrier, and that at no time did it ever enter into a contract with Western Express. Thus, Dollar General had no explicit contractual relationship with the carrier, and it accepted the goods without expectation that it would be liable for any freight charges beyond the freight component of the invoices that it paid to American Tissue.

In re Chateaugay Corp., 78 B.R. 713 (S.D.N.Y. 1987) was a case where a carrier attempted to collect shipping charges from consignees after the consignor (a steel manufacturer) filed for bankruptcy. The bankruptcy court looked to the bill of lading (which was marked "prepaid") as well as to the course of dealings between the parties to conclude that they had agreed that the consignor would be exclusively liable for the shipping charges. The court listed a number of factors (derived from an earlier opinion of the same court, *In re Penn-Dixie Steel Corp.*, 6 B.R. 817 (S.D. N.Y. 1980)) which it relied upon to reach this conclusion. These included (1) that the carrier historically looked solely to the consignor for payment; (2) that this was the understanding of the parties as evidenced by every facet of their business relationship; (3) that the consignor alone contracted with the carrier for shipping services; and (4) that direct billing was effected from carrier to consignor, and that direct billing took place after delivery. *In re Chateaugay Corp.*, 78 B.R. at 723-24. These same factors are present in the case before us.

Western Express asserts that it always considered the consignee, Dollar General, to be secondarily liable, but it has offered no proof that it had communicated any such belief to Dollar General at any time prior to American Tissue declaring bankruptcy or that Dollar General ever acknowledged the possibility of such liability on its part. The carrier had the right under Section 7(c) of the bill of lading, *supra,* to withhold delivery of the merchandise to Dollar General unless the consignee agreed to guarantee payment of the freight charges, but it never availed itself of that right. Nor did Western Express otherwise put Dollar General on notice that Western Express would look to Dollar General for payment. It therefore appears to us that the trial court did not err in holding that "American Tissue and Western Express had entered into an enforceable agreement rendering American Tissue exclusively liable to Western Express for all freight charges."

Western Express argues, however, that it is entitled to rely on a number of opinions in which the courts recited a presumption of consignee liability in the course of reaching a decision. For example, in *Pittsburgh, Cincinnati, and St. Louis Railway v. Fink,* 250 U.S. 577 (1919), the Supreme Court noted that while there were some conflicts of authority as to consignee liability under the common law, "the weight of authority seems to be that the consignee is prima facie liable for freight charges when he accepts the goods from the carrier"*Id.*, at 581.

In *Tennessee Central Railway Co. v. Cumberland Storage & Warehouse Co.*, 260 S.W.2d 20 (Tenn. Ct. App. 1953), one of the very few Tennessee cases dealing with the common law presumption, this court stated, "[t]he consignor is ordinarily liable for transportation charges. He requires the carrier to perform the service when he delivers the goods for transportation, and thereby obligates himself to pay the charges for such transportation. . . . But the consignee may become liable for the charges. When he accepts the goods and the benefits rendered, the law implies a contract upon his part to pay the charges **unless it appears to the knowledge of the carrier that he received the goods not as owner but as agent for another."** *Id.*, at 211 (emphasis added). In the more recent case of *Western Express v. Benchmark Electronics,* No M2001-03151-COA-R3-CV (Tenn. Ct. App. Jan. 23, 2003) (no Tenn. R. App. P. 11 application filed), we quoted the very same language as to consignee liability.[2]

While a common law presumption of secondary liability of the consignee may exist, it may not apply in all circumstances, as the above quote from *Tennessee Central Railway, supra* makes clear. When the consignor accepts the goods and the benefits rendered, it does not become a party to the express contract between the consignee and the carrier, but as the court noted, the law may imply a contract to make the consignee liable. Contracts implied in law have long been recognized as tools of equity, and have been described as a class of obligation imposed or created by law without the assent of the party bound, on the ground that they are dictated by reason and justice. *Boston, Bates & Holt v. Tenn. Farmers Mutual Ins. Co.,* 857 S.W.2d 32, 35 (Tenn. 1993); *Paschall's Inc. v. Dozier*, 407 S.W.2d 150, 153-154 (Tenn. 1966); *Browder v. Hite,* 602 S.W.2d 489, 491 (Tenn. Ct. App. 1980).

Our cases often use the terms "unjust enrichment," "quasi-contract," and "quantum meruit," interchangeably with contract implied in law. "Each is based upon an implied obligation where, on the basis of justice and equity, we impose a contractual relationship between parties, regardless of their assent." *Paschall's Inc. v. Dozier*, 407 S.W.2d 150, 154 (Tenn. 1966). However denominated, the obligations they create are "founded on the principle that a party receiving a benefit desired by him, under circumstances rendering it inequitable to retain it without making compensation must do so." *Id; Browder*, 602 S.W.2d at 491.

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[2]None of the cases Western Express cites for the presumption of consignee liability involves the same issues as does the present case. *Fink, supra*, involved the question of which party was liable to pay undercharges where the initial bill did not meet the requirements of the Interstate Commerce Act. Both *Tennessee Central Railway* and *Benchmark Electronics* involved liability for detention or demurrage of the carrier's equipment, not liability for the costs of delivery.

For example, in *Paschall's Inc. v. Dozier, supra*, the plaintiff contractor reached an agreement with the defendants' daughter to construct a bathroom addition to their home. After the addition was completed, the daughter was adjudicated as bankrupt. The contractor filed suit against the parents, seeking to recover a judgment against them for the value of the labor and material furnished. Our Supreme Court noted that there was no express contract between the contractor and the parents, but held that the parents were liable to the contractor under a contract implied in law, because they directly benefitted from the contractor's work, and would be unjustly enriched if they were not compelled to pay for it.

Similarly, a consignee could in some circumstances be unjustly enriched by avoiding freight charges. Any presumption of a consignee's secondary liability in the absence of a contract establishing such liability is based on the goal of avoiding such an inequitable result. In the present case, however, it appears to us that the presumption would not apply, because the record shows that Dollar General paid the transportation costs indirectly, as a component of its payment obligations under its contract with American Tissue. Thus, Dollar General was not unjustly enriched by the transactions at issue, and Western Express would not be entitled to receive the benefits of a contract implied in law.

Additionally, while the common law presumption may exist in some circumstances, it is only that: a presumption like other presumptions, it may be rebutted by contrary evidence. In granting summary judgment to Dollar General, the trial court stated that it had carefully reviewed the legal authority cited by both parties, and had found "that any common law presumption of Dollar General liability for freight charges is rebutted by contrary evidence." We agree.

On appeal, Western Express challenges the trial court's reliance on the two cases cited by name in its order, because in both of those cases the court stated that the carrier was estopped by its own conduct from imposing liability on the consignee.

In *Consol. Freightways of Delaware v. Admiral Corp.*, 442 F.2d 56 (7th Cir. 1971) as in the present case, the merchandise (electronic parts) was moved under bills of lading marked "prepaid." The carrier extended credit to the consignor by not insisting on timely payment of freight charges, but did not notify the consignee of the consignor's delinquencies. Meanwhile, the consignor sent the consignee its own invoices, which were paid in full and without question. When the carrier was unable to collect the freight charges from the consignor, it demanded that the consignee make payment and brought suit for those charges. The court ruled that the consignee was not liable because it relied to its detriment on the representation in the bills of lading that the freight was prepaid and, since the carrier did not inform the consignee of the true state of affairs, it was estopped from imposing liability on the consignee.

In *Mason and Dixon Lines v. Crossville Rubber Prods.*, 414 F.Supp 166 (U.S.D.C. Tenn. 1976), the court used similar reasoning to reach the same result under slightly different circumstances. In that case, the merchandise (machinery) arrived on trucks from a different company than the consignee expected. Although the bill of lading was marked prepaid, the

consignee refused to accept delivery until it could confirm that the freight charges had indeed been prepaid. The carrier's employees assured the consignee that they were, and the consignee accepted the goods. However, when repeated attempts by the carrier to obtain actual payment from the consignor failed, the carrier demanded payment from the consignee. The court held that the carrier was estopped to collect from the consignee because of the carrier's assurances of prepayment, and because the carrier "was most careless in its manner of extending credit to the consignor . . . " *Id.*, at 168**.** *See also Davis v. Akron Feed & Milling Co.*, 296 F. 675 (6th Circuit, 1924).

Western Express argues that the trial court erred in relying on *Consol. Freightways* and *Mason-Dixon Lines*, *supra,* to reach its decision, since the courts analyzed the obligations of the parties in those cases in terms of equitable estoppel, and all references to estoppel were stricken from the trial court's final order in this case at the insistence of the carrier. We note, however, that those references were not removed on the basis of any argument that a finding of estoppel would be inappropriate under the circumstances. The carrier does not contend on appeal that the facts of this case would not support a finding of estoppel, but simply that such a finding is not set out in the final order of the trial court.[3]

In any event, this court may affirm a trial court on a basis other than the one stated by the trial court. Rule 36 of the Rules of Appellate Procedure empowers our appeals courts to "grant the relief on the law and facts to which the party is entitled. . ." Our courts have long held that "[i]t is a fundamental rule of law that an appellate court will not reverse a correct judgment of a trial court which is based upon an insufficient or wrong reason therefor." *Adams v. Underwood*, 470 S.W.2d 180, 187 (Tenn. 1971). Stated another way, "[w]e must affirm the trial court if it reached the correct result, even if we disagree with the reasoning employed by the court to arrive at that result." *Denton v. Denton*, 33 S.W.2d 229, 232 (Tenn. Ct. App. 2000). *See also Kelly v. Kelly*, 679 S.W.2d 458, 460 (Tenn. Ct. App. 1984).

In this case, we agree with the trial court that the express agreement between Western Express and American Tissue precludes liability by Dollar General for the freight charges. We also conclude, however, that Western express's conduct precludes its collecting from Dollar General. Regardless of whether we characterize that conduct as establishing the factors set out in *In re Chateaugay Corp.*, *supra*, resulting in the conclusion that Western Express and American Tissue had agreed that American Tissue would be exclusively liable to Western Express for the freight charges, or whether we characterize the conduct as equitably estopping Western Express from seeking payment from Dollar General after American Tissue became unable to pay, the result is the same.

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[3] We note that in reaching its conclusion in *Paschall's, Inc. v. Dozier, supra,* that the plaintiff was entitled to recover on an implied contract, the Supreme Court cited with approval two cases of this court, in one of which the plaintiff was allowed to recover on the"equities of estoppel," 407 S.W.2d at 154 (*quoting Ford v. Whittle Trunk and Bag Co.*, 12 Tenn. App. 486).

Dollar General accepted delivery of merchandise from Western Express on bills of lading that indicated that American Tissue would be responsible for the freight charges. When American Tissue began to fall behind on its payments to Western Express, the carrier took no steps to inform Dollar General of the problem, or of its intention to hold the consignee secondarily liable for the freight charges, even as the shortfall grew to worrisome heights. Although it had the right to refuse to deliver the merchandise until Dollar General guaranteed payment, Western Express chose not to exercise that right.

Western Express thus deprived Dollar General of the opportunity to protect itself from unexpected charges. The "Pre-Paid" bills of lading, the pattern of business among the parties, and Western Express's silence as to its expectation that Dollar General was secondarily liable and that American Tissue was not paying all led Dollar General to accept the goods and the assumption the freight charges had been paid and/or that liability for them had been assumed by American Tissue. Had Western Express notified Dollar General of the situation or its expectation as to secondary liability, Dollar General would have had the opportunity to refuse the goods and avoid the detriment of possible liability for freight charges or make its own arrangements for shipping. Justifiable reliance on the action or inaction of the other party is an essential element of estoppel. *Arthur v. Lake Tansi Village, Inc*., 590 S.W.2d 923, 930 (Tenn. 1979); *Hicks v. Cox,* 978 S.W.2d 544, 550 (Tenn. Ct. App. 1998); *Bokor v. Holder,* 722 S.W.2d 676, 680 (Tenn. Ct. App. 1986).

The proof unequivocally showed that Western Express had no contractual right to impose liability on Dollar General for freight charges. We also find that the carrier was estopped by its own actions from relying on any common law presumption of secondary liability on the part of the consignee as a ground for recovery.

One of the reasons that the courts in the *Consol. Freightways* and the *Mason-Dixon Lines* cases, *supra*, found it inequitable to hold the consignee liable for the freight charges is that in both cases the consignee had already paid the consignor. Thus, compelling it to also pay the carrier would have required it to pay twice for the same services. In the case before us, Dollar General had still not paid everything it owed to American Tissue when that company filed for bankruptcy. Nonetheless, it was obligated to pay American Tissue.

Western Express notes that Dollar General paid over $3.2 million to the bankruptcy estate of American Tissue on pre-bankruptcy invoices and argues that, rather than pay the full amount of its debt outright, Dollar General could have used any of several other options to protect the interests of the carrier.

Whether or not each of the suggested alternatives was legally or practically available to Dollar General, which we need not decide,[4] we find no authority to require Dollar General to protect the interests of Western Express, and Western Express has offered no authority for the proposition that the consignee owed a duty to the carrier to take such actions. We therefore find no merit in the carrier's argument. To the extent Western Express offers the post-bankruptcy conduct of Dollar General as a factor to be considered in the balancing of the equities between the parties, we find that conduct essentially irrelevant to the issue of liability for the freight charges.

V.

The judgment of the trial court is affirmed. We remand this case to the Chancery Court of Davidson County for any further proceedings necessary. Tax the costs on appeal to the appellant, Western Express.

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PATRICIA J. COTTRELL, JUDGE

[4]The courses of action advocated by Western Express would not necessarily have resulted in a recovery by the carrier, for opinions in several bankruptcy cases involving similar facts suggest that the bankruptcy estate would have been able to fend off any such attempts to reduce its right to collect its just debts. *See In re Roll Form Prods., Inc.*, 662 F.2d 150 (2d Circuit 1981); *In re Chateaugay Corp.*, 78 B.R. 713 (S.D.N.Y. 1987); *In re Penn-Dixie Steel Corp.*, 6 B.R. 817 (S.D.N.Y. 1980).